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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/658,763	09/08/2000	Herbert Parks Hartgrove	PGI6044P0200US	3252

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WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
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EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/30/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/658763

Applicant(s)

Hartgrove

Examiner

John Guarnie/10

Group Art Unit

1771

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-14, 16-22 is/are pending in the application.
- ☐ Claim(s) 1-11 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 12-14, 16-22 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Part of Paper No. 10

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DETAILED ACTION

15. The Examiner acknowledges papers # 8 and 9, the extension of time and the amendment of 11/20/2002. The Examiner acknowledges the affirmation of the Restriction to Group II, claims 12-22. Group I, claims 1-11 are withdrawn as directed to the non-elected invention, method of making.

Election/Restriction

16. The Examiner acknowledges the Affirmation of Group II, claims 12-22. Group I, claims 1-11 are withdrawn as directed to the non-elected invention, the method of making. Applicant's traversing arguments regarding the article Group I, and the Method of making Group II of the Restriction were considered but were deemed not persuasive because the article can be made by another process wherein the layers of the polyester web may have dye and finish on either side of the layers, see claim 13. The Restriction is made final for reasons of record.

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17. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

18. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

19. Claims 12-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, it is the Examiner's position that the claim is directed to a durable nonwoven fabric comprising a web of polyester fibers which is imaged and patterned, and before dyeing is saturated with a pre-dye finish before curing. Since this is a product-by-process claim the burden is on applicant to show a difference in the product since process limitations are of no merit, In re Thorpe 227, USPQ 964. The claim appears to be indefinite because in claim 13, there is a lack of apparent antecedent basis, since claim

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13 refers to layers of polyester fibers, and claim 14 refers to layers of polyester and nylon fibers.

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 12-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cruise et al. 5,874,159 in view of Drelich et al. 5,098,764 and Namiki et al. 3,966,406 and Tohyama et al. 5,266,354.

Rejection is substantially maintained except with the addition of Tohyama as follows. Cruise describes a method of making nonwoven fabrics which are durable, (see abstract). Cruise describes the fabric is made of two layers (corresponding to a precursor web), (see abstract; column 2, lines 11-22). Cruise describes the base fabrics can be similar or different and can be hydroentangled, (column 3, lines 12-19; column 4, lines 65-68).

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Cruise describes the fabric layers can be made of polyester and polyamide (corresponding to nylon), or blends thereof (column 6, lines 39-44). Cruise differs from the claimed invention because it is silent about the image transfer device to form an imaged non-woven fabric, dyeing, and pre-dye finish or coating.

Drelich describes an image transfer device to form an imaged nonwoven fabric with enhanced physical properties and fabric with pleasing appearance, (column 2, lines 6-11; see Figure 3). Drelich describes the production of fabrics with superior properties with entangled fibers, (column 2, lines 38-68).

Namiki describes dyeing of fibrous articles, (see abstract). Namiki describes dyeing of polyester-type fibers which can be in the form of knitted, woven, or non-woven fabric, (column 3, lines 5-13). Namiki describes jet dyeing of fabrics, (column 3, lines 14-32).

Tohyama describes a coated (corresponding to a pre-dye finish before curing) fabric of polyester fiber, (see abstract). Tohyama describes the coating or pre-dye finish, (column 3, lines 26-59).

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It would have been obvious to one of ordinary skill in the art to modify the fabric of Cruise with the image transfer device of Drelich and to modify the fabric of Cruise with the jet dyeing of Namiki and to coat or finish the fabric of Cruise with the coating of Tohyama motivated with the expectation that improved fabric properties of image and pattern appearance as well as free from dye irregularity, (column 2, lines 15-17 of '406), would result, (column 2, lines 7-8, 67-68) as well as improving the dye from migrating, (column 3, lines 57-59 of '354).

Applicant's arguments regarding Cruise and abrasion resistance have been considered, but it is the Examiner's position that polyester fabric layers are described by Cruise and the properties of abrasion resistance are noted but since the claim sets forth physical characteristics desired in the article and no specific composition of polyester which would meet those characteristics the claims are vague, indefinite and functional since they cover any conceivable combination of ingredients or components either presently existing or which may be discovered in the future, see *Ex Parte Slob*, 157

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USPQ 172 (Bd.PatApp&Int 1968). Furthermore, since these are product-by-process claims the burden is shifted to applicant to show unobvious differences between the claimed product and the prior art product, In re Thorpe, 227 USPQ 964, 966 (Fed. Cir. 1985). Applicant's other arguments have been considered but are not considered germane with the new grounds of rejection as noted above.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

January 20, 2003

January 27, 2003



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